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PP RUEHWEB

DE RUEHPG #0264/01 1201311  
ZNR UUUUU ZZH  
P 291311Z APR 08  
FM AMEMBASSY PRAGUE  
TO RUEHC/SECSTATE WASHDC PRIORITY 0281  
INFO RUEHXP/ALL NATO POST COLLECTIVE  
RUEAIIA/CIA WASHDC  
RUEKJCS/SECDEF WASHDC  
RHEHNSC/NSC WASHDC  
RUEAMDA/MDA WASHINGTON DC

UNCLAS PRAGUE 000264

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SENSITIVE  
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E.O. 12958: N/A  
TAGS: [PREL](#) [PGOV](#) [MASS](#) [MARR](#) [EZ](#)  
SUBJECT: CZECH REPUBLIC: EIGHTH VISIT OF THE STATUS OF  
FORCES NEGOTIATING TEAM

REF: PRAGUE 241

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Summary and Introduction  
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1.(SBU) From April 22-25, PM Senior Advisor Ambassador Jackson McDonald led an interagency team to Prague for the eighth round of negotiations with the Czech Republic on a Supplemental Status of Forces Agreement (SOFA). Ivan Dvorak, Director of Strategy and Policy at the Czech Ministry of Defense, led the Czech inter-ministerial delegation.

2.(SBU) Although the Czechs demonstrated little flexibility with regard to their strict negotiating mandate, both sides eventually hammered out agreement on the following issues:

--- judicial cooperation (e.g., pre-trial confinement, conditions, and duration, and evidentiary procedures);

--- non-payment of air navigation and approach fees for official flights;

--- required consultations on terms of return of facilities upon the departure of U.S. forces;

--- the termination clause, which proved unexpectedly difficult;

--- labor. (The Czechs had raised some last-minute concerns regarding the previously agreed article relating to the relationship between employment conditions and U.S. military requirements. These concerns were resolved.)

3.(SBU) As instructed by DOD, the U.S. delegation proposed new, more flexible language on the scope issue. Ambassador McDonald underscored that our agreement to limit the scope of the SOFA to the ballistic missile defense radar site constituted an enormous, unprecedented concession since the U.S. has general, broad-scope SOFAs with other NATO allies. The Czech greeting our proposal positively but have not responded formally, pending review by the Czech cabinet.

4.(SBU) The Czechs proposed abbreviating the environmental article in order to obviate the need for "availability of funds" language under the U.S. Anti-Deficiency Act. This leaves all of the binding environmental commitments as well as the required ADA language within the Ballistic Missile Defense Agreement (BMDA), which was completed on April 3.

5.(SBU) Taxation remains the last unresolved obstacle to completing the SOFA. The Czechs insist that U.S. contractors

building, operating, and maintaining the radar facility, and U.S. contractor employees should pay taxes on profits and income generated in the Czech Republic in accordance with the U.S.-Czech bilateral tax treaty. Ambassador McDonald emphasized that the USG could not concede this issue. Dvorak said he would present the tax issue during the Czech government,s April 28 meeting. If the Czech government grants U.S. contractors tax-free status, the SOFA could be concluded quickly, possibly by phone or digital video conference. End Summary.

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Scope  
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6.(SBU) In an unprecedented effort to reach agreement, the U.S. side proposed a radar-site specific SOFA, the provisions of which the Parties "shall apply" to other mutually agreed activities. The Czechs viewed this as a general SOFA under the guise of a limited SOFA. Overnight consultations with Washington resulted in a second and final formulation stating that the Parties "may apply" the SOFA to other mutually agreed activities. In offering this final position, Ambassador McDonald emphasized that this marked an unprecedented concession unfound in any other supplemental SOFA with a NATO ally. The Czech side responded positively. Dvorak indicated he would recommend the Government approve this new language during its April 28 meeting.

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Availability of Funds and Environment Provisions  
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7.(SBU) The Czechs have repeatedly expressed concern that parliamentary opponents to the SOFA could negatively utilize

language that ties environmental commitments to U.S. availability of funds, as required by the U.S. Anti-Deficiency Act (reftel). Dvorak proposed eliminating most of the environment article in the SOFA, thereby obviating the U.S. requirement to offset those commitments with "availability of funds" language. Both sides provisionally agreed to delete all but two general paragraphs.

8.(SBU) This leaves all of the binding environmental commitments as well as the required ADA language within the Ballistic Missile Defense Agreement (BMDA), which was completed on April 3.

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Taxes  
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9.(SBU) Taxation of U.S. contractors and contractor employees remains the sole unresolved issue. The Czechs insist that all U.S. contractors building, maintaining, and operating the radar facility first pay Czech taxes and then seek relief under the U.S.-Czech double taxation treaty (reftel). Ambassador McDonald made it absolutely clear that the U.S. will not concede on the taxation issue and that U.S. contractors have tax-exempt status in all other NATO countries where we have a supplemental SOFA. The U.S. tabled two possible solutions based on other bilateral SOFAs, but the Czech side remained intransigent on their position, unable (or unwilling) to fight a Ministry of Finance redline. On the last day of negotiations Ambassador McDonald enlisted the support of Ambassador Graber, who raised the tax issue with the Czech Prime Minister at a previously scheduled meeting. The Prime Minister said he understood the USG,s position and would discuss it with the Minister of Finance when the government convened on April 28.

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Comment  
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10.(SBU) Now that the U.S. has conceded on scope, both sides

have clear way to conclude the SOFA. The Czechs must now reciprocate by conceding on taxation. Due to a desire to simplify the entire tax system, Finance Minister Kalousek has made the taxing of contractors a major "red line" issue. He does not want to create a new, special tax regime. As one of the most powerful members of the Christian Democrats (KDU-CSL), itself a junior party in the three-party coalition government, the main party in the government, ODS, cannot simply overrule him. Such a step could jeopardize the Christian Democrats, support for the SOFA as well as their support for the current government coalition.

11.(U) Ambassador McDonald cleared this cable.  
Graber